IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 26100 of 2006(F)

PETITIONER:

SARASAMMA,
D/O.GOPALAN, EDAYILAZHIKATHU VEEDU,
PERUMPUZHA P.O., KUNDARA, KOLLAM.

BY ADV. SMT.S.K. DEVI
ADV. SRI. SANTHOSH P.ABRAHAM

RESPONDENTS:
---

1. THE DISTRICT COLLECTOR,
CIVIL STATION, KOLLAM.

2. THE SPECIAL TAHSILDAR (LA) NO.II,
KOTTIYAM, KOLLAM.

3. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARUY,
FINANCE DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER ADV. SHRI L.G. SURESH BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26100 of 2006(F)

APPENDIX

PETITIONER'S EXHIBITS:

Ext. P1	:	TRUE COPY OF THE JUDGMENT DATED 25.01.1997 IN LAR NO. 3/1989 OF THE PRINCIPAL SUB JUDGE, KOLLAM.
Ext. P2	:	TRUE COPY OF THE APPLICATION FILED UNDER SECTION 28A OF THE ACT BY THE PETITIONER DATED 30.12.1997 BEFORE THE IST RESPONDENT.

/true copy/

P.A. TO JUDGE

lk

K.T. SANKARAN, J.

.....

W.P(C) No. 26100 OF 2006

.....

Dated this the 24th January, 2007

J U D G M E N T

Even after the second respondent filed a counter affidavit and the petitioner filed an affidavit dated 23.01.2007 thereafter, the facts are not clear.

2. The averments in the Writ Petition would indicate that the petitioner filed Ext. P2 application under section 28A of the Land Acquisition Act claiming enhanced compensation on the basis of the judgment in L.A.R.No. 3 of 1989 on the file of the Prl. Sub Court, Kollam. Ext P2 application is in respect of 4.40 Ares of land in Survey No. 5364/3/8 of Kottankara village. The grievance of the petitioner is that Ext.P2 application was not disposed of though the application was filed in December, 1997.

3. A counter affidavit was filed by the second respondent stating that the application filed by the petitioner under section 28A of the Land

Acquisition Act , based on the judgment in L.A.R.No.3 of 1989 was time barred and therefore that application was rejected and intimation was given to the petitioner . It is also stated that on verification of the application, it is seen that the petitioner *"neither filed 28(A) application nor applied for certified copy of J & D in L.A.R. 3/89 of Sub Court, Kollam within the stipulated time"*. It is also stated in the counter affidavit that the petitioner is not eligible to get compensation under section 28A of the Land Acquisition Act based on the judgment in L.A.R.No. 3 of 1989 because *"she neither filed application under section 28(A) nor applied for certified copy in time ".* Since the counter affidavit was vague, the records were called for. From the records, it is seen that the application dealt with therein relates to an extent of 0.85 Sq. metres of land in Survey No. 5352/B4-B1 and that the compensation was claimed on the basis of the award in L.A.R.No. 3 of 1989. The notes on the file would show that the petitioner filed an application under section 28A of the Land Acquisition Act relying on the judgment in L.A.R.No. 3 of 1989 with photostat copy of judgment and decree and that application was dismissed as time barred. It is also stated in the file thus:

> *"Moreover the petitioner filed another application relied on L.A.R.No. 566/88 of Sub Court, Kollam and registered with Sl. No.2339 which is eligible".*

4. Since the facts were not clear even after the production of the records, an order was passed on 04.01.2007 directing the petitioner to explain the facts and to file an affidavit indicating the following facts:

> *"i) How many applications have been filed by her. She has to produce copies of those applications.*
>
> *ii) The petitioner shall indicate as to the date on which the order rejecting the application was passed. Copy of that order should be produced by the petitioner.*
>
> *Iii) The petitioner shall state whether she has filed another application relying on the award in LAR 566 of 1988."*

The second respondent was directed to produce the file in respect of Ext. P2 application. The second respondent has not complied with that direction and there is no explanation either for non-production of records.

5. As directed in the order dated 04.01.2007, the petitioner has filed an affidavit which makes things more confusing. It is stated in the affidavit that thus:

> *" 4. I had filed two applications under section 28A on the basis of LAR 3/1989 one for the extent of 0.80 sqm and the other for an extent of 4.40 acres (7.50*

> *cent & 4 cent) I had filed another application under section 28A for the extent of 4.40 acres on the basis of the judgment in LAR 566/1988. The said application dated 03.01.2006 is produced herewith marked as Ext. P3. I had not filed more than one application with respect to same property on the basis of the same judgment.*
>
> *5. I had filed the Ext.P3 application before the 1st respondent to press the same if Ext. P2 is rejected on technical grounds and on the bonafide belief that there is no statutory bar for the same".*

6. It is not clear how many applications have been filed by the petitioner. It is not clear on the basis of which judgment she has made several applications. It is also not clear in respect of which land she has applied for enhancement of compensation . The second respondent is also not in a position to explain the correct facts. In spite of the direction, the petitioner has not produced copy of the order rejecting the application filed by her in respect of 0.80 Sq.m. of land. Ext.P4 order dated 10.10.2006 very vaguely states that the application filed on the basis of LAR No. 3 of 1989 was dismissed as time barred. It is also not explained in respect of which land the petitioner applied, on the basis of LAR. 566 of 1988.

7. The aforesaid facts would indicate that there are disputed facts

and both parties are not in a position or they are not prepared to state the correct facts. The only course open is to direct the petitioner to file an affidavit stating the correct facts before the second respondent and to direct the second respondent to deal with the application or applications under section 28A in accordance with law, based also on the facts stated in the affidavit of the petitioner. It is made clear that if any application has been rejected already, the same need not be considered afresh. It is made clear that the affidavit which the petitioner may file would not enable her to get any new rights and the affidavit is intended only to clarify the facts.

Writ Petition is disposed of as above.

K.T. SANKARAN,
JUDGE.

lk